

ONTARIO ATTORNEY GENERAL LAW LIBRARY



00059512

**Civil Forfeiture in Ontario 2007:
An Update on the Civil Remedies Act,
2001**

By
Ministry of the Attorney General
August 2007

KF
9747
O57
2007
c.1

KF
9747
O57
2007
c.1

Ontario. Ministry of the Attorney
General
Civil forfeiture in Ontario 2007: an
update on the Civil Remedies Act,
2001

DATE

ISSUED TO

11/24/07 D. In huts

KF
9747
O57
2007
c.1

Ontario. Ministry of the Attorney
General
Civil forfeiture in Ontario 2007: an
update on the Civil Remedies Act,
2001

MINISTRY OF THE
ATTORNEY GENERAL
LAW LIBRARY

Civil Forfeiture in Ontario 2007

An Update
On the
Civil Remedies Act, 2001

Ministry of the Attorney General

 Ontario



Digitized by the Internet Archive
in 2018 with funding from
Ontario Council of University Libraries

https://archive.org/details/mag_00059512

Table of Contents

Message from the Attorney General	3
Civil Forfeiture: What Is It?	4
History of Civil Forfeiture Around the World	4
Ontario — National and International Leadership	7
The Civil Remedies Act	8
How Civil Forfeiture Works	9
Where Forfeited Assets Go	9
Ontario Case Profiles and Results	10
Looking to the Future	17

A MESSAGE FROM THE ATTORNEY GENERAL

August 2007

Ontario's innovative Civil Remedies Act was the first of its kind in Canada, and I am proud that Ontario continues to be a nationally and internationally recognized leader in the field of civil forfeiture. We are using the Civil Remedies Act with great success. The Civil Remedies for Illicit Activities (CRIA) office, which enforces the act in Ontario, is considered an international authority on civil forfeiture and I commend this dedicated team for its excellent work.

This report, *Civil Forfeiture in Ontario 2007 — An Update on the Civil Remedies Act, 2001*, provides information and examples of civil forfeitures under the act.

Working with designated institutions across the province, including police, CRIA's office has achieved significant results. The Civil Remedies Act will continue to be used to seek court orders to forfeit assets acquired through or used for unlawful activity, and to use those assets to compensate victims.

The Honourable Michael Bryant
Attorney General

Civil Forfeiture: What Is It?

Civil forfeiture is the judicial transfer of title to proceeds and instruments of unlawful activity through civil proceedings.

In Ontario, civil forfeiture legislation focuses solely on the connection between property and unlawful activity and is not dependant on any criminal charges or convictions. The standard of proof required for civil forfeiture is the same as in all civil suits — a balance of probabilities.

In contrast, criminal law deals with people and their criminal liability for specific acts. The Criminal Code of Canada, the Controlled Drugs and Substances Act and numerous other statutes contain provisions that allow for the seizure or restraint of tainted assets in the course of a criminal investigation and provide for forfeiture upon conviction. Other federal statutes also provide for seizure, restraint and forfeiture through adoption of the Criminal Code regime. Criminal seizure, restraint and forfeiture apply to assets derived or obtained directly or indirectly from the commission of almost all criminal offences.

Criminal asset forfeiture is primarily conviction-based, meaning the Crown usually must first obtain a criminal conviction against an offender in order to seek a forfeiture order. The Crown must establish, on a balance of probabilities, that the target asset arose from or was used in the commission of an offence.

History of Civil Forfeiture Around the World

Forfeiture law is built on one of the oldest concepts in law. It dates back to ancient Saxon law, prior to the Norman conquest of 1066.

Modern civil forfeiture law is covered by statute, in the same way as remedial property laws. Civil forfeitures are brought *in rem*: a legal action directed solely against the property seeking a judicial finding that the origin of the property lies in illegal activity, or is being used as an instrument of unlawful activity. An *in rem* proceeding is not an action against a person, but against the property involved.

Jurisdictions including Ontario have recognized the importance of this civil remedies statute in providing mechanisms, which not only recover the proceeds of unlawful activity, but also return those proceeds to its victims.

United States

Statutory forfeiture has long been part of the American legal tradition. Initially, forfeiture law was used to protect revenues coming largely from tariffs and to protect shipping from the threat of piracy.

In the latter half of the 20th century, the U.S. pioneered the use of legislation specifically designed to go after unlawful assets. Congress passed the Racketeer Influenced and Corrupt Organizations (RICO) Act in 1970, to deal with rising organized crime activity. RICO laws at both the federal and state levels include civil remedies.

That same year, the U.S. Congress also passed the Comprehensive Drug Abuse Prevention and Control Act, which authorized the government to seize and ask the courts for the forfeiture of property used in connection with illegal drug activity.

In the late 1980s and early 1990s, Congress expanded forfeiture law and created the Department of Justice Assets Forfeiture Fund. Proceeds from the sale of forfeited assets are deposited and subsequently used for victim restitution as well as for law enforcement initiatives.

In 2000, federal forfeiture laws were amended by the Civil Asset Forfeiture Reform Act (CAFRA) to address specific issues, including the onus of proof with the government bearing the onus to prove, on a balance of probabilities, that property was used for illegal activity.

In the U.S. there are state and even local forfeiture laws, creating hundreds of provisions.

Australia / New Zealand

While criminal forfeiture has been in place in Australia since 1987, the state of New South Wales amended its forfeiture laws in 1990 to create a civil forfeiture regime for a range of unlawful activity. More states followed, as did the federal government with the Proceeds of Crime Act, 2002.

This act strengthened the existing conviction-based forfeiture scheme that was in the Proceeds of Crime Act, 1987, and incorporated both the imposition of monetary penalty orders and the civil forfeiture of property used in, intended to be used in, or derived from crime.

The Proceeds of Crime Act, 2002, further created a national confiscated assets account from which, among other things, various law enforcement and crime prevention programs could be funded.

The Criminal Proceeds Recovery Bill, 2007, is currently before the New Zealand Parliament, and is expected to provide a civil forfeiture regime for property and profits derived from significant criminal activity.

Ireland

Ireland passed the Proceeds of Crime Act, 1996, and created the Criminal Assets Bureau to implement civil asset forfeiture in response to public calls for action following the murders of a police officer and a journalist investigating organized crime in Ireland.

Ireland has one of Europe's most successful civil asset forfeiture programs.

United Kingdom

The United Kingdom's Proceeds of Crime Act, 2002, with amendments under the Serious Organized Crime and Police Act, 2005, addresses the detection and recovery of criminal property under the overall supervision and control of the Assets Recovery Agency. The agency has the power to enforce its own civil forfeiture or tax cases and works to recover assets, which are, or represent, property obtained through unlawful conduct in England, Wales, Scotland and Northern Ireland.

In 2007, the Serious Crime Bill was introduced in Parliament, which, if passed, would merge the forfeiture functions of the Assets Recovery Agency with the Serious Organized Crime Agency.

Canada

While Ontario set the precedent in Canada with its civil forfeiture legislation, British Columbia, Alberta, Saskatchewan, Manitoba and Quebec have since introduced or passed similar legislation.

Ontario's Civil Remedies Act, formerly known as the Remedies for Organized Crime and Other Unlawful Activities Act, 2001, came into force in 2002. The legislation concerns itself only with civil matters. It does not impose any criminal penalty, fine or other punishment.

In December 2005, when amendments to the Civil Remedies Act under the Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2004, came into force, the province expanded the act's powers to preserve, manage and dispose of property frozen or forfeited to the Crown.

In June 2005, a constitutional challenge to the Civil Remedies Act was dismissed. The Ontario Superior Court of Justice agreed with Ontario's position

that the act regulated property and civil rights, the administration of justice and local matters, which all fall within provincial jurisdiction. The Court also agreed that civil forfeiture of property does not infringe the Charter of Rights and Freedoms. In May 2007, the Ontario Court of Appeal (Ontario's highest court) upheld the lower court's decision. The Court also upheld the lower Court's findings that the monies in that case were unlawful proceeds.

The Safer Roads for a Safer Ontario Act, 2007, passed on May 29, 2007, further amended the Civil Remedies Act to allow civil courts to impound and order the forfeiture, as instruments of unlawful activity, vehicles used or likely to be used by people who have two or more previous licence suspensions relating to drinking and driving offences or who have continued to drive while their licence is suspended for drinking and driving.

That legislation also renamed the Remedies for Organized Crime and Other Unlawful Activities Act, 2001, to the Civil Remedies Act, 2001, and included a variety of technical amendments to the act, which strengthen the ability of the Attorney General to conduct civil forfeiture proceedings.

Ontario — National and International Leadership

Ontario created the Civil Remedies for Illicit Activities (CRIA) Office in 2000 to implement and enforce the Civil Remedies Act. The office is a branch of the Legal Services Division of the Ministry of the Attorney General. CRIA has a specialized team of civil lawyers who bring civil forfeiture proceedings to court on behalf of the Attorney General.

CRIA is considered an international authority on civil forfeiture. The office regularly shares its expertise and best practices with other jurisdictions including the Philippines, Ireland, the United Kingdom, Australia, Hong Kong, the United States and South Africa.

The office has offered assistance to all of the other provinces in Canada that have either passed or introduced civil forfeiture legislation. CRIA's Director has testified as an expert on civil forfeiture before the Standing Committee on Institutions at the National Assembly in Quebec City.

The office works with stakeholders in Ontario, including police, ministry enforcement personnel and prosecutors. Every year, CRIA trains approximately 2,500 police officers in civil forfeiture procedures through the Ontario Police College, the Criminal Intelligence Service of Ontario and other organizations.

CRIA sits as an observer at a European Union asset recovery network, as well as an Advisory Group to the New York State District Attorneys Association and the Caribbean Law Enforcement Community of Practice.

CRIA has worked with the Philippine Judicial Academy, the Philippine Anti-Money Laundering Council, the U.S. State Department, the United Nations Office of Drugs and Crime and the International Monetary Fund, among other institutions interested in Ontario's civil forfeiture regime.

The Civil Remedies Act

Ontario's Civil Remedies Act, 2001, is an innovative piece of legislation that permits a civil court, at the request of the Attorney General, to freeze, take possession of, and forfeit to the Crown, property acquired through or likely to be used for unlawful activity. Property includes all types of assets, such as real estate, cars and cash.

There are three types of civil cases that the Attorney General of Ontario can bring under the Civil Remedies Act:

- In a **proceeds** case, the Attorney General must establish that property was acquired as the result of unlawful activity. If proven, this property may be forfeited to the Crown by an order of the Ontario Superior Court of Justice.
- In an **instruments** case, the Attorney General must establish that the property in question is likely to be used to engage in unlawful activity that could result in the acquisition of other property, including money, or in serious bodily harm to any person. Where the Attorney General establishes that the property is an instrument, often from past use of the property in an unlawful activity, the Ontario Superior Court of Justice may order that the property be forfeited to the Crown.
- In a **conspiracy** case, the Attorney General must establish that two or more people conspired to engage in unlawful activity where they knew or ought to have known that the activity would likely result in injury to the public. The Ontario Superior Court of Justice may award damages for that injury or issue preventive orders.

The Superior Court of Justice must approve all steps in a civil forfeiture proceeding under the act. The Civil Remedies Act authorizes the court to order the preservation of money or property to prevent it from being sold or mortgaged. If the government then proves its case, the court can order the money or property to be forfeited to the Crown. The onus is on the government to prove its case.

The purpose of the Civil Remedies Act is to assist in:

- Compensating individuals, municipal corporations and prescribed public bodies who suffer losses as a result of unlawful activities
- Preventing people who engage in unlawful activities and others from keeping property that was acquired as a result of those activities
- Preventing property from being used to engage in unlawful activities
- Preventing injury to the public that may result from conspiracies to engage in unlawful activities.

How Civil Forfeiture Works

The process for civil forfeiture under the Civil Remedies Act begins when an institution designated in the act, such as a police service or government ministry, submits a case to the reviewing authority, an independent Crown counsel in the Ministry of the Attorney General. Counsel reviews the case and decides whether the statutory criteria in the Civil Remedies Act have been met. The case information is then forwarded to the ministry's CRIA office, which is responsible for enforcing the act.

CRIA lawyers bring proceedings to court on behalf of the Attorney General. The court can grant an interim order to freeze property pending the outcome of the forfeiture proceeding. If the lawyers can prove that the property in question is a proceed or an instrument of unlawful activity, the court can issue orders forfeiting the property to the Crown.

Where Forfeited Assets Go

CRIA's Director of Asset Management — Civil is responsible for taking possession of and preserving, managing, disposing of, or otherwise dealing with all property under preservation or forfeited to the Crown.

Forfeited property is converted to cash and deposited into the Civil Remedies Act special purpose account. The act allows for disbursement as follows:

- Victim Compensation — Direct victims of the unlawful activity that has given rise to forfeiture may submit a claim for compensation.

A public notice directed to victims, municipal corporations and public bodies regarding claims for compensation is published for each case. The notice may also be sent directly to individual victims if their addresses are known. In order to be considered for compensation, claims must normally be filed within a specific time frame identified in the notice, which varies with each case.

Independent adjudicators determine eligibility for and the amount of each payment. No payments are made until all victims' claims have been adjudicated.

Grants — Funds remaining after cost recovery and victim compensation may be disbursed for grants for programs to assist victims or prevent victimization.

The Civil Remedies Act and related regulations allow a grant program for funds remaining after victim compensation and cost recovery. The program supports programs and initiatives that assist victims of unlawful activity and help prevent victimization.

Organizations eligible for grants are designated by the act, including law enforcement agencies and Ontario government ministries, boards and commissions. These institutions must meet the established criteria and submit a project proposal outlining how the grant will assist victims of unlawful activities or prevent victimization.

All applications are screened and assessed by the approval committee, which consists of members from the CRIA office, the Ministry of the Attorney General and the Ministry of Community Safety and Correctional Services.

Cost Recovery — Funds may be used for cost recovery to the Crown. Although the Crown is entitled to recover its costs first, the practice to date has been to compensate victims first.

Ontario Case Profiles and Results

Since November 2003, forfeiture proceedings have been launched in over 170 cases.

As of July 31, 2007, \$3.6 million in property has been forfeited under the act. The province has an additional \$11.5 million in property frozen under this act, pending completion of civil forfeiture proceedings. The disposition of all property is controlled by court order.

- **170 cases**
- **\$3.6 million in property forfeited**
- **\$11.5 million in property frozen**
- **Almost \$1 million distributed to victims**
- **More than \$900,000 awarded in grants to help prevent victimization**

Nov 1, 2003 – July 31, 2007

Drugs and Marijuana Grow Operations

Seventy-three per cent of CRIA's cases have been drug related. Approximately \$500,000 in property, including real estate, cash, guns, cars and grow operation equipment has been forfeited to the Crown as proceeds or instruments of unlawful activity linked to marijuana grow operations.

Forfeiture of King Street East Crack House in Hamilton

On March 28, 2006, a crack house at 193 King Street East in Hamilton, along with an associated bank account containing approximately \$10,000 was forfeited by court order to the Crown as an instrument of unlawful activity.

Police say the property, the former Sandbar Tavern, was the source of crime, drug dealing and almost daily police calls for over 10 years. The building was the location of two crack-related murders, numerous stabbings and drug offences, including crack cocaine possession, use and trafficking.

According to police, neighbouring businesses and residents were plagued with crimes associated with the drug trade, including robberies, burglaries and violence.

Following the forfeiture of this property, ownership was transferred to the City of Hamilton as compensation for the victimization of the community.



Attorney General Michael Bryant takes down the "Sandbar" Sign, following the announcement of the forfeiture of 193 King St. E. in Hamilton.

Interim Seizure of Crack House in Hamilton

On November 17, 2006, the ministry obtained a preservation order under the Civil Remedies Act, to temporarily take control of a Hamilton residence and approximately \$20,000 in cash and cheques. This property is an alleged crack house in a residential neighbourhood.

The matter remains before the court. All allegations must still be proven in court.

Cash Seizures

Almost \$1 million in illicit cash has been seized under the act.

In 2006, \$99,000 in cash found in a rented car during a motor vehicle search by Ontario Provincial Police near Kirkland Lake was forfeited to the Crown as proceeds of unlawful activity.

In another case, \$120,130 in bundled cash was found during a traffic stop and seized by Ontario Provincial Police near Marathon. It was forfeited as proceeds of unlawful activity in 2006.

According to experienced drug enforcement officers, the Thunder Bay area is often the mid-point for money to be exchanged for drugs from British Columbia.



Cash, seized by Ontario Provincial Police near Marathon, was forfeited as a proceed of unlawful activity.

Marijuana Grow Operation Forfeited in Oshawa

On June 16, 2005, Durham Regional Police executed a search warrant at a residence located at 208 Severn Street in Oshawa and discovered a large, active grow operation (grow op) in the residence. Police seized grow op equipment, plants and dried marijuana with a street value of more than \$540,000.



Photo courtesy of DRPS Drug Enforcement Unit

Durham Regional Police Service seized 540 marijuana plants found in the basement of the house at 208 Severn St., Oshawa.

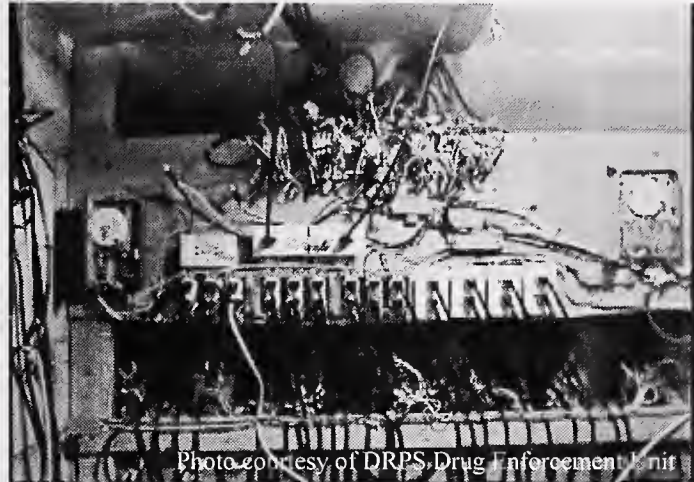
On July 24, 2006, the property was frozen by court order. On January 9, 2007, the house was forfeited to the Crown by court order. The property was sold and funds deposited into the special purpose account for distribution in accordance with the legislation.

A grow op — current or past — can drastically lower the value of a property because of resulting electrical, plumbing, mould and drywall damage.

Unless it is totally rehabilitated, a grow op house may be impossible to finance and insure.

In 2002 alone, grow ops were estimated to have cost Ontario nearly \$100 million, mostly due to electricity theft. The likelihood of fire in a grow op dwelling is 40 times greater than in that of a typical Ontario dwelling. Police say the potential for violence in and around grow ops is also very real. Those involved in grow ops frequently have weapons to protect their illicit crop from theft. In 2005, 10 guns seized from a marijuana grow operation were forfeited under the Civil Remedies Act.

Under the Civil Remedies Act, 13 properties along with marijuana grow equipment and other assets linked to marijuana grow op, worth more than \$500,000, have been forfeited. Fifty-two properties associated with marijuana grow operations are currently frozen under the act.



Police found an illegal hydro bypass in the Severn Street house.

Fraud

Internet and telemarketing fraud, securities and stock market fraud, pension and insurance fraud, credit card fraud, identity theft and counterfeiting are economic crimes that affect Ontarians of all ages and occupations. It is often the most vulnerable members of society who are targeted.

According to the Canadian Bankers Association, in 2005, credit card fraud alone resulted in losses of \$201 million to major credit card companies, and debit card fraud resulted in losses of \$70.4 million.

Organized criminals, in particular drug traffickers, generate large amounts of cash that they must convert into “clean money,” whose origin is difficult to trace, in order to finance and expand their unlawful activity.

Since November 2003, almost \$1 million in assets have been forfeited as proceeds or instruments of unlawful activity associated with fraud or money laundering under the Civil Remedies Act.

In one case brought forward by the York Regional Police, businesses were defrauded in an office equipment-leasing scam, with losses of over \$1.3 million.

Under this scam, businesses would obtain a new photocopier, along with financing, and as part of the deal, the old photocopier was removed and the

existing lease was expected to be paid out. However, the old lease was not paid out, and victims ended up with two lease obligations but only one photocopier. In other cases, customers would sign up for a new photocopier and financing and be billed but never receive their equipment. The court ordered the forfeiture of \$300,000, which has since been distributed to victims of the scam.

In another case, individuals from across Canada were victims of a scheme that involved using their locked-in retirement pensions as collateral for cash loans, if they transferred the funds to the lender. They were also advised, falsely, that there would be no tax consequences for the loan.

As a result of this case, which was brought forward by the Financial Services Commission of Ontario, \$595,000 was forfeited by court order to the Crown. In March 2007, that money, plus accrued interest, for a total of \$633,141, was returned to the 39 known victims of the unlawful activity.

Destruction of Forfeited Street Racing Cars

On June 15, 2006, two cars that had been seized and forfeited by court order under the act as a result of street racing incidents were destroyed.

This was the first time street racing cars were destroyed under civil forfeiture legislation. York Regional Police had impounded the cars after they were stopped for speeding and dangerous driving in separate incidents involving street racing in 2003 and 2004.



Two street racing cars forfeited as instruments of unlawful activities are crushed under a front-end loader.

Police say both cars were substantially modified for the purpose of racing with features added to the engine and exhaust to increase power, the vehicles' road clearance lowered to increase speed and the backseats and interior panels removed to reduce the cars' weight.

Gang Clubhouse Frozen

On September 26, 2006, a civil court order was obtained to temporarily take control of 487 Ortono Avenue in Oshawa, a Hells Angels clubhouse that was, among other things, allegedly used to sell alcohol illegally.

The order preserves the property pending a forfeiture proceeding and prevents the owners from selling or further mortgaging the property. The building has been secured and the case remains before the court. All allegations must be proven in court. This court order against a gang-owned property is the first of its kind in Canada.

Victim Compensation and Grants

Under the Civil Remedies Act, approximately \$1 million in compensation has been distributed to direct victims of unlawful activity, and more than \$900,000 in grants have been distributed to law enforcement agencies for initiatives to assist victims of unlawful activity and prevent victimization.

In September 2006, a known Hamilton crack house that was forfeited under the act was transferred to the City of Hamilton as compensation for the community's victimization.

In January 2007, \$300,000 was distributed to victims of an office equipment-leasing scam.

In January 2007, grants totalling \$763,000 were awarded to 10 Ontario law enforcement agencies for initiatives to assist victims of unlawful activity, or to prevent unlawful activities that result in victimization. These grants included:

- York Regional Police — \$300,000 to help upgrade their palm and finger printing identification system to ensure quick, reliable and accurate identification
- Peel Regional Police — \$105,000 to expand the parameters of the Peel Police Internet Child Exploitation Unit
- Brockville Police Service — \$56,664 toward a canine unit vehicle to help locate missing kids and elderly people quickly
- Ottawa Police Service — \$50,195 to fund specialized training, equipment and tools for drug section investigators

- Ontario Provincial Police Asset Forfeiture Unit — \$48,000 to extend the service contract for a forensic accountant required to investigate asset forfeiture cases across Ontario
- Oxford Community Police Service — \$47,821 to update technology, training and equipment to effectively investigate drug-related incidents and marijuana grow operations
- West Grey Police Service — \$47,073 toward a canine unit vehicle to help investigate property-related offences and drug crimes
- Waterloo Regional Police Service — \$45,570 to update technology to enhance investigative tactics such as warrant execution, surveillance and interviewing
- Timmins Police Service — \$41,607 to implement a portable dictaphone reporting system to effectively and efficiently process victim statements in a victim-friendly manner
- Chatham-Kent Police Service — \$21,351 to upgrade technology, training and equipment to increase drug crimes intelligence.

In March 2007, as a result of a case brought forward by the Financial Services Commission of Ontario that involved unlocking pension funds, over \$633,000 was returned to the 39 known victims of that fraud.

In April 2007, the International Village Business Improvement Area of Hamilton, an association representing businesses operating near a former King Street East crack house, received a total of \$7,037 in compensation as a result of the forfeiture of a bank account associated with the property.

In August 2007, further grants totalling \$174,410 were announced, including:

- Ontario Provincial Police Asset Forfeiture Unit — \$144,000 to extend the service contract for a forensic accountant required to investigate asset forfeiture cases across Ontario
- Peel Regional Police — \$15,950 for partial funding to host “The Expert Witness Seminar,” to assist police officers in developing skills as expert witnesses
- Ontario Provincial Police Biker Enforcement Unit — \$14,460 to upgrade technology.

Looking To The Future

CRIA's caseload has been steadily increasing. This is expected to continue as enforcement personnel from government and the province's law enforcement agencies bring forward more and more cases for civil forfeiture proceedings, especially in areas such as mortgage and telemarketing fraud.

Civil forfeiture takes the profit out of unlawful activity. It helps to dismantle the financial underpinnings of illicit enterprise and makes proceeds unavailable for reinvestment in unlawful activity.

Allowing people to keep ill-gotten gains and spend them as they wish goes against the fundamental notions of justice. Using the civil court process to take away those proceeds demonstrates that unlawful activity does not pay and helps to maintain public confidence in the justice system.

The Ministry of the Attorney General will continue to use civil forfeiture to compensate victims, provide grants to help reduce unlawful activity and prevent people who engage in unlawful activities from benefiting from those activities.

